

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 674 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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NEW INDIA ASSURANCE CO LTD

Versus

MEGHIBEN SAMAT AYAR

Appearance:

1. First Appeal No. 674 of 1989
MR RAJNI H MEHTA for the appellant
..... for Respondent No. 1-3
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CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The New India Assurance Company Limited, by filing this appeal under Section 110-D read with section 110-C(2A) of the Motor Vehicles Act, 1959, has challenged the judgment and award dated February 14, 1989, passed by the Motor Accident Claims Tribunal (Main), Kutch at Bhuj, in Motor Accident Claim Petition No.95 of 1985.

2. The respondent No.1 met with a vehicular accident on April 26, 1984 while he was going from Lakhapar to Tappar along with one Raghabhai Jivan. At around 7 a.m. when they reached opposite to the burial ground one kilometer away from Lakhapar, the respondent No.1, during the course of his employment of the respondent No.2, came driving tractor No. GAH 7133 with trailer No. GTY 7659 from behind in rash and negligent manner and dashed the respondent No.1, as a result of which the respondent No.1 fell down and her right hand was run over by the tractor. She also sustained injuries over the hand and the chest. She was removed to one private clinic, Yash Orthopaedic Hospital, at Bhuj, where her right hand was amputated above the elbow. The respondent No.1, therefore, filed MACP No.95 of 1985 claiming compensation of Rs.2,71,500/against the opponents and the Insurance Company for the accidental injuries and permanent disablement suffered by her.

3. The claim petition was resisted by the Insurance Company and the opponents Nos.1 and 2, inter alia, contending that the accident did not happen because of the rash and negligent driving of the driver of the tractor. The factum of the accident was also denied by the driver and the owner of the tractor. At the end, it was contended that the driver of the tractor was not holding valid driving licence and, therefore, the claim application be dismissed.

4. To substantiate the claim of the compensation, the respondent No.1 was examined herself at Exh.32, Dr. Yogesh Ghoda was examined at Exh.38, and eye-witness, Raghavbhai Jivanbhai was examined at Exh.34. The claimant also produced voluminous documentary evidence in support of her claim for compensation on various heads. The Tribunal, on appreciation of oral as well as documentary evidence, came to the conclusion that the claimant sustained injuries which resulted into permanent disability due to rash and negligent driving by the driver of the tractor. The owner of the tractor was vicariously held responsible as the accident was caused by the driver during the course of his employment. On over all appreciation of the documentary evidence, the Tribunal awarded Rs.1,43,425/- in favour of the respondent No.1 which has been challenged by the Insurance Company in this appeal.

5. The learned counsel for the appellant, Mr. R.H. Mehta, has taken us through the entire record and proceedings of the appeal. The respondents, though duly

served, have not appeared either personally or through the advocate.

6. The learned counsel for the appellant has submitted that the Tribunal has erred in relying upon the testimony of the claimants and the so-called eye-witness, Raghavbhai Jivanbhai, Exh.34, for holding that the claimant had sustained serious injuries due to rash and negligent driving of the driver of the tractor. It is submitted by the learned counsel for the appellants that no independent witness was examined to prove the factum of the accident and, therefore, the Tribunal has erred in relying upon the testimony of the interested witnesses in holding that the claimant had sustained the injuries in the vehicular accident which took place due to rash and negligent driving by the driver of the tractor. The learned counsel for the appellant has also challenged the finding of the Tribunal with regard to assessment of the compensation awarded to the claimants.

7. In our opinion, none of the submissions of the learned counsel for the appellant deserves any merit. The Tribunal has considered all the relevant aspects of the case and the oral evidence led by the claimant in coming to the conclusion that the accident had taken place due to rash and negligent driving by the driver of the tractor. The Tribunal has awarded a just and adequate compensation to the claimant for the accidental injuries sustained by her which has resulted in permanent disablement. Hence, the judgment and award of the Tribunal deserves to be confirmed.

8. The learned counsel for the appellant has also submitted that the interest awarded by the Tribunal on the amount of compensation determined as payable, is on the higher side.

9. The Tribunal in fact has awarded interest at the rate of 12% per annum on the compensation determined by it from the date of the claim petition till realization.

10. The question of interest is no doubt within the discretionary jurisdiction of the Tribunal, but in the light of various decisions of this Court, the rate of interest has to be tempered with the economic reality prevailing in the country and the rates of interest prevailing generally in the market from time to time.

11. After considering various relevant and pertinent factors, this Court has in a number of decisions awarded a reasonable rate of interest, particularly where the

interest awarded by the Tribunal has not been so exorbitant so as to shock the conscience of the court. Thus, on the facts and circumstances of the case and in consonance with the decision of the Supreme Court in the case of Kaushnuma Begum vs. New India Assurance Company Limited, reported in 2001 42(1) Gujarat Law Reporter 593, and earlier decisions of this Court, we hold and direct that the original claimant shall be entitled to interest on the amount of compensation awarded by the Tribunal under the impugned award at the rate of 9% per annum from the date of claim petition till realisation.

12. The impugned judgment and award are modified only to the aforesaid extent and the rest of the award stands confirmed.

13. This appeal is, therefore, partly allowed to the aforesaid extent with no order as to costs. Decree be drawn accordingly.

April 18, 2002 (M.H. Kadri, J.)

(K.A.Puj, J.)
(swamy)